

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF INTEGRATED RESOURCE)
PLANNING FOR THE PROVISION OF)
STANDARD OFFER SUPPLY SERVICE BY)
DELMARVA POWER & LIGHT COMPANY UNDER)
26 DEL. C. § 1007(c) & (d): REVIEW) PSC DOCKET NO. 06-241
AND APPROVAL OF THE REQUEST FOR)
PROPOSALS FOR THE CONSTRUCTION OF)
NEW GENERATION RESOURCES UNDER 26)
DEL. C. § 1007(d))
(OPENED JULY 25, 2006)

Reply of Jeremy Firestone on Modified Redactions and Redaction Justifications

1. On January 29, I filed a Motion to Commence Proceedings to Determine Validity of Assertions of Confidentiality.
2. That motion noted that “all of the bids redact important information for decisions. For example,
 - a. “Bluewater Wind and the other bidders redact pricing information; yet this Commission and DNREC establish that 1/3 of all points in the bidding process would be allocated based on price.
 - b. Bluewater Wind and the other bidders redact the capacity factor, which is important in understanding how much power each bid will generate on average.
 - c. Bluewater Wind and the other bidders redact pages in their entirety without explanation or justification.
 - d. Bluewater Wind redacted Form L Appendix 4, which on information and belief, is a diagram of transmission lines.
 - e. NRG redacts portions of the Table of Contents
 - f. NRG redacts individual words. See e.g., p. 5, wherein it criticizes a “large _____ wind farm
 - g. NRG redacts portions of the section on price stability; yet price stability counts for 20 of the 100 points to allocate.

- h. NRG redacts large portions of Vol 1., Section 5, Environmental Benefits and Impacts including Tables 5-4 - 5-8 (air emissions of conventional pollutants such as NO_x, SO₂, VOCs and PM) and Table 5-9 CO₂ emissions), yet environmental impact at 14 points in the highest non-price component of the evaluation. Thus, in total NRG redacts information relevant at a minimum to 2/3 of the potential allocable points.”
3. That motion requested in pertinent part that the Commission:
 - “3. ORDER Bluewater Wind, Conectiv and NRG to provide enough detail regarding each and every redaction so that the public can understand what is being redacted.
 4. ORDER Bluewater Wind, Conectiv and NRG to justify each and every redaction.
 5. EVALUATE each and every assertion of confidentiality and determine whether any redacted material must, or should, be made available to the public.”
4. The motion was set for hearing on February 6, 2007.
5. A Staff memorandum dated January 30th to interested parties set forth a proposed schedule to resolve the claims of confidentiality. The memorandum stated that such claims would be further considered by the Commission on February 27.
6. A hearing was held on the motion on February 6, 2007. Statements were made or written into the record by the State Treasurer and Senator Bunting supporting more disclosure rather than less.
7. While the Motion was denied without prejudice, I essentially received the relief requested.
8. The Commission required the parties to re-examine their redactions with an eye toward as much disclosure as possible and to provide justifications for their redactions.
9. By email from Robert Howatt, Re: Approval for Delayed Filing, February 15, 2007, based on the Commission ruling of February 6, Mr. Howatt underscored what was required of the bidders. “Staff expects the bidders to provide”:
 - a. “a page/form reference”
 - b. a “generic description of the material redacted”
 - c. “the reason for non-disclosure (i.e. both how the release of the information could be harmful as well as the level of competitive harm)”
 - d. “the time frame for which such information would continue as confidential and/or proprietary.”

10. The February 15 Howatt email concluded that staff “would tend toward disclosure of information unless non-disclosure is justified.”
11. On February 16, 2007, each of the bidders submitted re-redacted bids. Bluewater made a good faith effort to comply with the requirements; Conectiv, while not fully in compliance (e.g., it did not specify a time frame), made an effort to comply as well.
12. In contrast, one can only conclude that NRG did not take the Commission seriously: It heralds the length of its proposal, as if length were a reflection of the quality of its proposal rather than of the fact that the method of generation that it has proposed, coal gasification, has the shortest track record of commercial deployment of the three proposed methods and that its hoped for sequestration carries the most uncertainty.
13. NRG substitutes legal argument (primarily in the form of legal conclusions) for an item-by-item explanation of and justification for its redactions because it believes the process the Commission established to be “impractical and inefficient.”
14. Questions of confidentiality as the Attorney General has recognized, however, are “factual question[s].” Del Op. No. 77-037 (attached as Exhibit C in Bluewater’s recent filing). And it is not appropriate for NRG to simply disregard the Commission; rather NRG should have filed a motion with the Commission requesting the Commission to modify its prior ruling if it feels that the scheme established by the Commission is unworkable.
15. Further review of NRG’s original and re-redacted versions of its bid reveals that:
 - a. NRG redacts the title and scale units of graphics showing reductions in pollution (page 20, Figure 1-9). Thus, while the public can see the graphic, it is not clear whether the graphic is based on pollution units or pollution per MWh units. This conceals whether, given the planned increase in electricity output, the absolute amount of pollution from NRG’s existing and proposed facilities at Indian River will increase.
 - b. While NRG has not yet “conduct[ed] a detailed geologic and engineering study in the region surrounding Indian River to rigorously evaluate and test” options, it has redacted information critical to determining whether volumetric area, porosity, and amount of porosity available, which would shed light on how probable it is that the geology of the region is adequate to support sequestration.
 - c. NRG redacts other information on the geology of the peninsula, which appears to be based on published material (e.g. Section 6.5, Table 6-2 from “Hansen 1982”).
16. NRG’s second redacted version for the most part retains the same redactions as the first redacted version. Items no longer redacted provide significant insight into the

extent to which NRG maintains an overly broad view on confidentiality The original word or phrase redacted is underlined below.

- a. “The development of a significantly large wind 400 MW farm is”
- b. “The Indian River IGCC Project will be located within the boundaries of NRG’s 1,148 acre Indian River station....”
- c. “The project will occupy approximately 70 acres adjacent to the existing four generation units.”
- d. Figure 1-5 shows the arrangement of the IGCC plant itself together with a new circular rail loop, unloading station, and fuel yard that will be built to serve the Indian River IGCC Project....”
- e. “The Norfolk Southern rail company will be the primary fuel transporter.”
- f. “NRG is offering Delmarva the option to have carbon-capture equipment installed as part of the initial project build, ready for commercial operation in 2013, or to install such equipment as such future date....”

NRG’s overly broad view of these trivial matters leaves one with little confidence that when matters of substance are at issue that its filing comports with law. It suggests as well that its remaining redactions need to be closely scrutinized.

- 17. NRG continues to redact portions of the Table of Contents and information on price, price stability, capacity factor, environmental emissions, the performance of its project with and without capture technology installed, and practicality of sequestration of carbon (including the report and white paper). Instead, what the public learns is that the “initial phase of the Sequestration Effort is underway and includes [redaction].”
- 18. NRG states in its bid that it does not have sufficient certainty at this time to commit to sequestration of the carbon (“issues remain” regarding design and implementation generally and NRG has not yet “conduct[ed] a detailed geologic and engineering study in the region surrounding Indian River to rigorously evaluate and test” options. Vol. 1., Table 6-1, p 100 and p. 101-102. Caroline Angoorly, NRG Senior Vice President (News Journal, February 19, 2007) in a “rebuttal” editorial states that the “innovative IGCC technology will capture and sequester approximately 65 percent of the carbon emissions ... at the facility” (emphasis added). Given the impression left by the un-redacted portions of NRGs bid, the public needs to view the redacted portions of the bid in order to be assured that NRG will in fact “capture and sequester” 65 percent of the carbon emissions as it has stated in the newspaper.
- 19. NRG’s actions leave the public no closer to understanding the general subject matter of much of what it as redacted, and why and for how long it will maintain the

- redactions, than we were on February 6 when the Commission ordered the bidders to re-examine the extent of their redactions and to justify those that remained.
20. Given that the public comment period on the staff's evaluation of the bids will soon commence and the town meetings are scheduled for early March, NRG's failure to comply is highly prejudicial.
 21. Because of NRG's highly prejudicial action, I may be left with little choice other than to re-institute my "Motion to Commence Proceedings to Determine Validity of Assertions of Confidentiality."
 22. The Commission should order NRG to immediately comply with its February 6 ruling and extend the public comment period (which could have the effect of delaying the final decision on the bids and perhaps rendering other bids stale) or find that NRG's bid is non-conforming.
 23. Conectiv manufactures Commission "acknowledgement" of its peculiar position that it is not a party to this proceeding. Conectiv, however, does not rely on anything this Commission has said or done in this proceeding, but rather, on a single sentence in an email from Senior Hearing Examiner O'Brien in the related IRP proceeding.
 24. At the same time, Conectiv rightly titles its filing "public access to Docket 06-241 Bid Information."
 25. Conectiv suggests it is not a party because it has not intervened. Surely, if Conectiv were to become aggrieved in the bidding process, it does not have to rely on Commission discretion on whether to allow it to intervene under rule 21. Indeed, the fact that Conectiv has not intervened is irrelevant as Conectiv is clearly a party "as a matter of right" under Commission rule 2.
 26. Conectiv redacts vital information on price, capacity, and environmental impacts, including NOx permits, air emission offsets and even the length of time it estimates it will take to obtain air permits (Form I).
 27. Bluewater redacts vital information on price and capacity factor as well as two documents on the geophysics of the area (Shared documents 11 and 12).
 28. Bluewater has, however, made a novel and interesting proposal. It will agree to waive any claim of confidentiality with respect to capacity factor, MWh to be delivered, the bid price and the quantities and qualities of all emissions, provided the other bidders likewise disclose such information.
 29. In DE AG Op. 77-037 (2000) (appended as Exhibit C to Bluewater filing), the Attorney General concluded that bid price was not subject to a claim that it is exempt from disclosure as "commercial or financial" information. "This would not include

matters of substance relating to the product or service bid on, such as the quoted price....”

30. DE AG Op. 00-1B15 (2000) (appended to NRG’s letter in opposition to Firestone “Response to Request for Access to Confidential Information and Motion for Entry of a Protective Order”), *citing with approval* Hecht v. Agency for International Development, C.A. No. 95-263-SLR (D. Del. Dec. 8, 1996) for the proposition that while profit multipliers were exempt from disclosure, “unit prices charged to the government were not exempt from disclosure”.
31. Given the above two DE AG Opinions and Hecht, the bidders should be required to disclose all information related to price (although not profit) and price stability. It also should go without saying that air and other environmental emission and discharge estimates and the potential to control such discharges and emissions (e.g., carbon capture and sequestration potential) should be released to public view.

Respectfully submitted,

A handwritten signature in black ink, reading "Jeremy Firestone". The signature is written in a cursive, flowing style with a large initial "J" and "F".

Jeremy Firestone
19 February 2007